

IN THE HIGH COURT OF JUDICATURE AT PATNA

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Criminal Appeal (SJ) No.187 of 2000

Rabindra Das, son of Sri Ram Bhaju Das, resident of village-Hargawan, P.S.-  
Manpur, District- Nalanda.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

With

Criminal Appeal (SJ) No. 191 of 2000

Bhairab Prasad, son of late Tarni Prasad, resident of Mohalla-Mussallahpur  
Naharpar, P.S.-Kadamkuan, District- Patna.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

Appearance:

(In both cases)

For the Appellant/s : Mr. Devendra Kumar Sinha, Sr. Advocate with  
Mr. Abhinay Raj, Advocate  
Mr. Pramod Kumar Sinha, Advocate  
For the Respondent/s: Mr. Sanjay Kumar, Advocate, S.C./CBI

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 13-08-2014

*Anjana Prakash, J.* Both the appeals have been heard together and are  
disposed off by this common judgment since they arise out of same  
judgment.

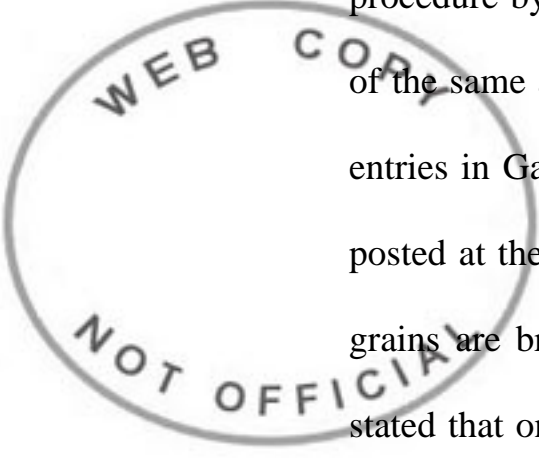
2. Appellant, Rabindra Das, has been convicted under  
Section(s) 409 and 477 Indian Penal Code as well as Section 5(1) (c)

and 5(1) (d) punishable under Section(s) 5(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for three years, two years and three years respectively under each count. Appellant, Bhairab Prasad, has been convicted under Section(s) 409 Indian Penal Code as well as Section 5(1) (c) and 5(1) (d) punishable under Section(s) 5(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment three years and three years respectively under each count by the Special Judge, CBI, South Bihar, Patna, in Special Case No.82 of 1990/R.C. Case No.33-A of 1990 vide judgment dated 27<sup>th</sup> May, 2000.

3. The case of the prosecution is that altogether 752 bags of wheat, 32 new and 71 unserviceable gunnies were found deficient in Sector-B of Silao Depot of FCI Gaya Depot of which there was no reasonable explanation furnished by the present Appellants, who were Depot In-charge and Assistant Manager along with R. B. Paswan, District Manager, Gaya.

4. On this allegation, the Appellants were put on trial in course of which 12 witnesses were examined. PW 1, Shankar Choudhary, and PW 2, Rama Shankar Singh, are formal, who have proved sanction orders.

5. PW 3, Sadhu Sharan Sinha, was the Assistant Manager,



Vigilance Squad, Food Corporation of India, who explained the procedure by which the food grains are brought into depot and entries of the same are made. He stated that if stock goes out of the Godown, entries in Gate Pass Register in Form-M is made. He himself was not posted at the Depot and, therefore, apart from the procedure by which grains are brought and disbursed he has not stated much. He further stated that on the third of every month stock of every month is sent to the Main Office but sometimes there is delay in sending the same for various reasons.

6. PW 4, Dev Kumar Prasad, also an Officer of the FCI at the same Depot, has stated that the Appellant, Bhairav Prasad, was the Assistant Manager, whereas, Appellant, Rabindra Das, was A.G. 1 of the said Depot. He proved various entries having been made by the accused R. B. Paswan. There is not a single word incriminating the present Appellants.

7. PW 5, S P Sinha, was also an officer of the FCI, who stated that at the relevant time Appellant, Ravindra Das, was AG I of the Depot and that he had made certain entries in Form-M on which there was signature of accused R. B. Paswan. He further stated that Gunny Register was maintained by the Appellant and he proved entries of 31.08.1987, wherein, it was written that Brahamdeo Prasad was

handing over charge to Appellant Rabindra Das. Even though he proved the entries, but he conceded that those were not made in his presence. His further statement was that for security of the Godown Central Industrial Security Force was posted and no article could be removed from the Godown except on the orders of the Assistant Manager. Even though he stated that personal verification had been held in 1987, but he did not know the details of the same.

8. PW 6, Kamla Kant Das, was one of the members who had conducted the physical verification of the Godown and proved various stock registers and that entries appear to have been made in hurried manner. He also testified that R. B. Paswan had failed to show the stock physically at the time of physical verification and there were no entries of the Gunny Register. He stated that none of the registers are relevant for maintaining account for unserviceable gunnies. He further stated that evidently entry of unserviceable gunnies was incorrect and hastily made. In paragraph 9, he specifically stated that there were huge numbers of gunny bags in Silao Sector at the time of physical verification but he did not count every bag of every kind kept there. There was no positive statement that gunny bags were ever physically verified at the time of verification. His attention was drawn to the statement before the Investigating Officer and he conceded that he had

not stated about the factum of shortage of gunny bags since he was not questioned on that point.

9. PW 7, Baidhyanath Ram, has proved certain registers and entries therein even by the Appellant, Rabindra Das. However, their relevance is not discernable.

10. PW 8, Sri T. N. Lahiri, is the main witness examined on behalf of the prosecution. He was the head of the physical verification team of the stock at the Silao Sector Godown and he stated that on evaluation of registers he found certain disparities and incorrect entries. However, to a specific question as to whether, wheat was weighed, he stated that it had not been done. Even though he stated that there was physical counting of the bags, but this is not supported by PW 6, who was one of the members of the Team.

11. PW 9, Phani Bhushan Haldar, is a formal witness, who stated only about the procedure maintained at the Depots. PW 10, Shyam Sunder Roy, also FCI official, has stated about the procedure in which wheat is transported and how the physical verification is done. However, there is no connection with the procedure so far as the present occurrence is concerned. PW 11, Radhey Shyam Prasad, also an officer of the FCI, has merely stated about the seizure of certain registers by PW 8.

12. PW 12, Avijit Dey, the Investigating Officer has unfortunately testified only with regard to the investigation done as regards the shortage of stock/gunny bags. His evidence does not in any manner further the cause of allegations.

13. Two witnesses were examined on behalf of the defence on the point that there was nothing amiss and, therefore, Appellants had wrongly been prosecuted.

14. On a fair evaluation of the evidence of the witnesses, in my understanding, when PW 6 has failed to corroborate PW 8 on an important point as to whether physical counting of the bags had been made at the stage of physical verification, it would be difficult to base the conviction of the Appellants on the sole testimony of PW 8, who was apparently is an interested witness having given an adverse report. Moreover, the Investigating Officer did not care to verify the truthfulness of allegation with respect to shortage of wheat/gunny bags. Further, from the evidence of PW 8, it appears that he was only aggrieved with the fact that entries in various registers by the present Appellants had been done in a hasty manner and they could not satisfy the team with regard to the entries made therein.

15. In such circumstances, I would be inclined to hold that the conviction of the Appellants is bad in law and on facts. Hence, the

judgment and order of conviction dated 27<sup>th</sup> May, 2000, passed by the Special Judge, CBI, South Bihar, Patna, in Special Case No.82 of 1990/R.C. Case No.33-A of 1990 is hereby set aside. The Appellants are acquitted of their respective charges and are discharged from the liabilities of their respective bail bonds.

16. In the result, both the appeals stand allowed.

(Anjana Prakash, J)

*Patna High Court,*  
*Patna*  
*NAFR*  
*JA/-*

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